

FMLA

A Supervisors Guide

CHECKLIST

1. When an employee has been out on leave for an FMLA qualifying situation for more than three consecutive calendar days – on the fourth day (if the employee does not return to work), you will need to complete the FMLA Notification Letter and mail that with the *Family and Medical Leave Request Form*, and the *Notice of Employee Rights and Obligations Form* to the employee. (These forms are available on the Human Resources Internet site at <http://www.tempe.gov/hr/> under Forms, FMLA).

NOTE: Non-work days shall be counted towards determining the period of eligibility; however, only the employee's actual scheduled workdays shall be designated as FMLA leave.

2. The supervisor should review the forms when returned by the employee to determine if there is a need for the employee to have the Certification of Health Care Provider Form completed.
3. All completed forms should be forwarded to Human Resources.
4. The supervisor should ensure hours of FMLA leave have been recorded on the timesheets as FMLA leave. He or she should also monitor the employee's usage of FMLA leave.
5. Supervisors may request that employees returning to work after an extended FMLA absence, due to their own serious medical condition, provide a Fitness for Duty release from their physician indicating that they are able to perform the essential functions of the job.

Following are some common questions regarding the requirements of the Family and Medical Leave Act of 1993.

What is FMLA?

The Family and Medical Leave Act (FMLA) of 1993 gives eligible employees up to 12 workweeks (*the City of Tempe currently allows up to 17 workweeks*) of unpaid leave each year. (*Tempe defines this as a calendar year*) for the following situations only:

1. the birth and care of a newborn child or placement of a child for adoption or foster care
2. to care for the employee's spouse, child or parent with a serious health condition
3. for a serious health condition that makes the employee unable to perform the functions of the employee's job.

What is an "eligible" employee?

Employees must have been working for the employer for at least 12 months AND they must have worked at least 1,250 hours (an average of 24 hours/week) during the 12-month period immediately preceding the FMLA leave.

What do I do if an employee asks me if they can take FMLA Leave?

If an employee is able to foresee the need for FMLA leave, such as in the case of a pregnancy or scheduled surgery, he or she is required to provide the City with 30 days advance notice, or within two (2) days of becoming aware of the need for unforeseen leave. The supervisor should provide the employee with the *Family and Medical Leave Request form*, the *Notice of Employee Rights and Obligations form* and the *Certification of Health Care Provider form* if requested. These forms can be retrieved from <http://www.tempe.gov/hr/> under Forms, FMLA.

What if the employee doesn't provide advance notice?

In many situations, such as for their own illness or to care for a spouse or child, employees will not be able to give advance notice. As a supervisor, you are required to monitor situations where employees are out on leave for FMLA qualifying situations. Once an employee has been out for more than three consecutive calendar days, you should follow the requirements indicated in the checklist above.

I have an employee who is out for 4 or 5 days at a time several times a year. Do I have to mail the FMLA packet of information each time?

FMLA leave can be taken on an intermittent basis. However, unless the employee has already advised you that he or she will be taking intermittent FMLA leave, you should forward him or her the packet for every unforeseen leave of more than three consecutive calendar days. This ensures that the employee is made aware of his or her rights each time and that the City is able to count that time towards their FMLA leave, if it is qualifying.

Am I required to keep records of FMLA Leave for all the employees I supervise.

Human Resources will maintain records of employees' use of FMLA leave. You can certainly keep your own records as well if you choose. Remember that the 17 weeks of leave is per calendar year. You should monitor the employee's usage of FMLA leave to ensure the leave does not exceed 17 weeks.

FMLA leave is unpaid?

Yes. FMLA offers protection for the employee's job for the 17-week period, and is unpaid leave. However, depending on the reason for the leave, employees may be eligible or required to use their vacation and/or sick leave balances prior to taking unpaid leave. In these cases, the paid vacation or sick time would count as part of the FMLA leave allotment. Employees may also elect to use any available compensatory time, but this will not count as part of the FMLA leave allotment. Under certain circumstances, employees may also be eligible to apply for compassionate and/or catastrophic leave.

If an employee who has been out on FMLA leave calls to say they are coming back to work, what should I do?

Under certain situations, you may need to request that the employee provides a fitness for duty release from their doctor prior to their return to work. This is usually to ensure that they are able to fulfill the essential functions of their job. If you are unsure about whether you should request this, check with Human Resources.

Are employees out on FMLA leave supposed to be paid for holidays?

Employees on unpaid FMLA leave do not receive holiday pay, court time or bereavement leave. They also do not accrue vacation or sick leave when they are on unpaid leave. They do continue to receive coverage under the health plans; however, they are still responsible for payment of the dependent premium.

Am I required to know all of the details about FMLA leave?

No. Usually, each situation is unique and must be carefully reviewed to determine the employee's rights and the City's responsibilities. You are not expected to be an expert on FMLA issues. However, you should always assist any employee in contacting your department's assigned analyst in Human Resources for answers to questions. Your other major responsibility is to forward the FMLA notification letter and packet of information to employees every time they are out on a FMLA qualifying situation of more than three consecutive calendar days, unless they have already requested intermittent leave under FMLA.